gone considerable suffering and that he has had his promotion prospects somewhat affected. He was a fisheries officer undergoing a three-month course at the University of Singapore when he met with this accident and since then he has been unable to further his ambitions in the fisheries department. He has, however, been transferred to the establishment where he is employed on clerical duties because he can no longer do any field work, not at least for some considerable time.

So far as the injuries themselves are concerned, I find little difficulty in assessing what the general damages under the head of pain and suffering and loss of amenities and so on should be. I assess them in the round sum of $20,000.

The only difficulty is with regard to his loss of promotion prospects. He was a very junior officer in the fisheries department when he joined it in Sarawak in May 1966 and he was sent down to do this 3 months course at the university and he met with this accident in July. One does not really know how well he would have progressed in that field. He has said that his promotion prospects were better in the fisheries department than now as a clerical officer in the establishment but it is extremely difficult to predict what course his career in the fisheries department would necessarily have taken or what his future in the establishment will be.

It is odious to make comparisons based on promotion prospects and salaries as between different departments of the Government service as sometimes service in one department, though promising in the early stages, may as a result of changing conditions, turn out to be less rewarding while service in another department with a seemingly less promising future may turn out to be more fruitful than originally expected.

Undoubtedly initial prospects appeared to be rosier in the fisheries department which the plaintiff had just joined before the accident. It is said that he is now incapable of doing field work and because he is attached to the establishment he may not be able to rise as high in the latter service as in the fisheries department. It may well be that in the absence of any deterioration in his mental alertness and general efficiency he may achieve heights in the establishment which he might never have been able to reach in the fisheries department even though his immediate prospects there in 1966 were brighter.

However, there is always the likelihood that he could have done better in the fisheries department at least in the first five to ten years or so. I do not think that one should only take into account the extra allowances for field work, subsistence and so on which he could have earned in the fisheries department. It is difficult to conclude that he would have done so well there and made so much more money there than in the establishment that one should apply that yardstick alone to assess the greater financial benefits he would have gained over any greater length of time. There are always a number of other factors, both tangible as well as intangible, to be considered in assessing future prospects and chances of promotion. Some officers have been known to stagnate for reasons only known to their immediate superiors and the promoting authority. However, in view of the unfortunate accident which has, nevertheless, reduced his immediate chances, I would assess, for what it is worth, doing what I can in the realm of little more than speculation, damages under this head in the round sum of $7,000 at the very most.

I therefore assess total general damages in the round sum of $27,000. Together with agreed specials at $900 there will be judgment for $27,900 to the Public Trustee for the plaintiff to be paid by the first and second defendants in the proportions I have indicated.

Order accordingly.

Solicitors: *Murphy & Dunbar; Hilborne & Co.: Battenberg & Talma.*

RE S. SIVASUBRAMANIAM; *EX PARTE* NAGALINGAM, A CREDITOR

[O.Bk.J. (Ibrahim J.) February 11, 1969]

[Malacca — In Bankruptcy No. 6 of 1967]

Bankruptcy — Adjudication — Application for adjournment — Submission of proposal for composition after expiry of prescribed period — Bankruptcy Act, 1967, ss. 8(2), 24(3) and 93(2).

This was an application by the official assignee for the debtor to be adjudged a bankrupt under section 24(3) of the Bankruptcy Act, 1967. The debtor against whom a receiving order was made on October 16, 1967 and his public examination was concluded on June 17, 1968, submitted a proposal for a composition for presentation to his creditors on October 16, 1968. Section 24(3) provides that the court shall adjudge a debtor bankrupt if such composition or scheme was not accepted or approved within 14 days after the conclusion of the public examination.

Held: (1) unless the debtor was made a bankrupt, the unsecured creditors would not be able to get any real benefit at all, and an adjournment therefore would be detrimental to their interests;

(2) the granting of an adjournment would restrain the official assignee from selling the debtor's unsecured property and in the circumstances of this case the assistant official assignee's opposition to the request for adjournment was reasonable and proper.

Cases referred to:-

(1) *Re Ng Say Tee; Official Assignee, F.M.* v. *Manmohan Singh* [1954] M.L.J. 177.

(2) *Re Chew Kean Kor* [1957] M.L.J. 34.

BANKRUPTCY.

Jaginder Singh (Assistant Official Assignee) for the Official Assignee.

K. D'Cruz for the debtor.

Cur. Adv. Vult.

Ibrahim J.: On 16th October 1967 a receiving order was made against the debtor trading as Peter Chong & Co. of No. 34, Jalan Laksamana, Malacca on the petition of a creditor. The public examination

of the debtor was held on 23rd May 1968, 13th and 17th June 1968 when it was concluded. No composition or scheme was accepted or approved within 14 days after the conclusion of the examination of the debtor and this is an application by the official assignee for the debtor to be adjudged a bankrupt under section 24(3) of the Bankruptcy Act, 1967. The report to court of the official assignee is enclosure (82) in the file. The said section 24(3) reads *inter alia* as follows:

"Where a receiving order is made against a debtor,... if a composition or scheme is not accepted or approved in pursuance of this Act within 14 days after the conclusion of the examination of the debtor or such further time as the court allows, the court shall adjudge the debtor bankrupt."

The period of 14 days has not been extended by the court.

Section 93(2) of the Act provides that the court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose and the debtor had requested the court that this application be adjourned to a reasonable date on the grounds stated in his affidavit dated 10th January 1969 which is enclosure (85) in the file. He had on 16th October 1968 submitted a proposal for a composition to the assistant official assignee to be presented to his creditors for their consideration. Copy of the proposal is exhibit "SS 1" attached to (85). The object of the proposal is to enable him to re-open his business for normal trade and subsequently to sell his property and business, Peter Chong & Co., at a fair price as a going concern and in paragraph 12 of his affidavit the debtor said:

"In the premises, I humbly submit that if I am allowed to re-open my business for normal trade there is reason to say that given sufficient time, my business can be sold as a going concern and the premises and fixtures related to my business can be sold for not less than $180,000 (dollars one hundred and eighty thousand only) which amount will be sufficient to settle all my debts with my secured creditor in full and unsecured creditor at 50 cents in the dollar."

His secured debt is about $80,000 and his unsecured debt is about $190,000. His valuers, C. H. Williams & Co., estimated the value of his property No. 34, Jalan Laksamana, Malacca with benefit of possession and free from encumbrances as on 4th August 1967 at $160,000 excluding the value of the machinery, stocks and other contents of the building and any goodwill attaching to the business carried on in the premises. Copy of the valuers' report is exhibit "SS 5" attached to (85). He had, since the receiving order was made, handed to the assistant official assignee $4,946.55 which according to paragraph 8 of (85) was the entire income received from his business known as Peter Chong & Co., which in fact was closed for normal trade by virtue of the receiving order made against him. It was contended that to adjudge him a bankrupt would be of no real value to the creditors and might cause serious hardship to him and that given time and opportunity the creditors would benefit.

The assistant official assignee opposed the debtor's request for adjournment as the debtor had had plenty of time already and unless he is made a bankrupt the unsecured creditors would not get any benefit at all. The debtor's proposal was made after expiry of the prescribed period and in any event he did not consider it a proposal for a composition at all as stated in his letter dated 30th October 1968, copy of which is attached to (85) marked "SS 2".

I agree with the views expressed by the assistant official assignee. The receiving order was made on 16th October 1967 and had he really wanted the debtor had ample time to put up a workable composition or scheme which could be accepted and approved within the prescribed period. The proposal submitted to the assistant official assignee is vague in its terms and the assistant official assignee was fully justified in holding the view that it was not a proposal for a composition at all. It does not, for instance, set out the terms relating to preferential claims as prescribed by section 43(2) of the Act. It is true that the sum of $4,946.55 had been handed over to the assistant official assignee but the proposal has not specified what the expected nett income per month of the business would be if allowed to operate in full. It is evident that unless he is made a bankrupt, the unsecured creditors would not be able to get any real benefit at all, and an adjournment therefore would be detrimental to their interests.

The main portion of the debtor's assets is the property which he mortgaged to the secured creditor and an adjournment would not be of real benefit to him as any order made would not affect the rights of the secured creditor to sell the secured property. In *Re Ng Say Tee; Official Assignee, F.M.* v. *Manmohan Singh*[1] it was held that:

"a secured creditor's rights are governed by section 9(ii) of the Bankruptcy Enactment and he is entitled to proceed outside the bankruptcy and independently of it."

The said section 9(ii) is substantially the same as section 8(2) of the 1967 Act. If that property is sold the possibility of the debtor running his business becomes purely speculative.

Though it was not mentioned in his affidavit, it was submitted on behalf of the debtor that the secured creditor was taking action to sell the secured property and that he had filed an injunction to restrain the creditor from selling the property at a reserved price of $90,000. If adjudged a bankrupt he would not by virtue of section 38(1)(a) of the Act be competent to proceed with the case without the sanction of the official assignee. I could not see any real merit in this submission. The secured creditor could only sell the land in accordance with the law, and the official assignee has a discretion to give his sanction or not.

In *Re Chew Kean Kor*[2] which was a motion for an order restraining the official assignee from selling by public auction certain lands belonging to the debtor, Spenser Wilkinson J. in his judgment said:

"As I understand the law of bankruptcy it is the duty of the official assignee to realise the debtor's assets for the benefit of creditors, and the court will not interfere with the discretion of the official assignee even at the instance of a creditor, unless his actions are so utterly unreasonable and absurd that no reasonable man would so act."

The effect of granting an adjournment would be to restrain the official assignee from selling the debtor's

unsecured property and in the circumstances of this case, I am satisfied that the assistant official assignee's opposition to the request for adjournment is reasonable and proper.

I therefore refused the debtor's request for adjournment and ordered that he be adjudged a bankrupt.

Order accordingly.

Solicitors: *Joseph & Son.*

BOUSTEAD TRADING SDN. BHD. v. EMPLOYEES PROVIDENT FUND BOARD

[O.C.J. (Ibrahim J.) August 4, 1969]

[Kuala Lumpur — Originating Summons No. 271 of 1967]

Provident Fund — Person whose wages exceed $500 a month — Taking part-time employment at wages below statutory limit — Whether "employee" within Employees Provident Fund Ordinance, 1951, ss. 2 and 7(1).

The plaintiff employed one Lim from September 11, 1950 to January 31, 1966 at monthly wages above the statutory limits of $400 and $500 as laid down in the Employees Provident Fund Ordinance, 1951, as amended from time to time. In or about January 1958 Lim without the knowledge or consent of the plaintiff took part-time employment with one Seng Lee Co. Ltd. for which employment he was paid monthly wages below the said statutory limits. On March 11, 1967 the defendant notified the plaintiff that Lim was found liable to contribute to the provident fund in respect of his part-time employment with effect from January 1958 and in consequence the plaintiff was liable to pay arrears of contribution on Lim's behalf amounting to $4,220 in respect of his full-time employment with the plaintiff. The plaintiff complied with the demand of the defendant and paid the said amount under protest. On July 27, 1967 the defendant demanded payment of interest on contributions in arrears amounting to $1,645 and the plaintiff paid this sum, again under protest.

In this application the plaintiff sought for the determination of the following questions: (1) whether Lim was or was not at any material time an employee of the plaintiff and whether the plaintiff was or was not at any material time the employer of Lim within the meaning of the Employees Provident Fund Ordinance, 1951 and the Regulations made thereunder as amended from time to time; (2) whether the plaintiff was or was not then or at any material time had or had not been under any liability to pay contribution to the provident fund in respect of the said Lim.

Held: (1) although Lim's monthly wages from Seng Lee Co. Ltd. were all the time below the statutory limits but his monthly wages from the plaintiff were always above the statutory limits and there was no reason why "wages" in paragraph (2) of the First Schedule to the Ordinance should not be construed to mean not only the wages Lim was getting from the said company but also the wages he was concurrently getting from the plaintiff. As Lim had not become an "employee" when he took up employment with the company the plaintiff was not an employer of an employee within the meaning of section 7(1) and as Lim had not become liable to contribute the plaintiff was not caught by the proviso to section 2;

(2) accordingly (a) Lim was not at any material time an employee of the plaintiff and the plaintiff was not at any material time his employer within the meaning of the Ordinance and the Regulations made thereunder as amended from time to time; (b) the plaintiff was not then or at any material time had not been under any liability to pay contribution to the provident fund in respect of Lim;

(3) therefore (a) an account must be taken of all sums paid under protest by the plaintiff to the defendant by way of contributions to the Employees Provident Fund as demanded by the defendant together with interest on such arrears of contributions similarly paid by the plaintiff to the defendant upon the demand of the defendant and (b) the defendant must refund to the plaintiff the amount found due upon taking of the account with 6% interest thereon.

ORIGINATING SUMMONS.

D. L. Pickard for the plaintiff.

V. C. George for the defendant.

Cur. Adv. Vult.

Ibrahim J.: This is an application by the plaintiff for the determination of the following questions: —

(1) Whether Lim Itt Haw was or was not at any material time an employee of the plaintiff and whether the plaintiff was or was not at any material time the employer of Lim Itt Haw within the meaning of the Employees Provident Fund Ordinance No. 21 of 1951 and the Regulations made thereunder as amended from time to time,

(2) Whether the plaintiff is or is not now or at any material time has or has not been under any liability to pay contribution to the Employees Provident Fund in respect of the said Lim Itt Haw,

and for consequential orders.

The facts are not in dispute and may be summarised as follows. The plaintiff employed one Lim Itt Haw from 11th September, 1950, to 31st January, 1966, at monthly wages above the statutory limits of $400 and $500 as laid down in the Employees Provident Fund Ordinance, No. 21 of 1951, as amended from time to time. In or about January, 1958, Lim whilst in the employment of the plaintiff and without the knowledge or consent of the plaintiff took part-time employment with one Seng Lee Co. Ltd. (with whom he is still employed) for which employment he was paid monthly wages by Seng Lee Co. Ltd. below the said statutory limits.

On the 11th March, 1967, the defendant wrote to the plaintiff notifying the plaintiff that Lim was found liable to contribute to the Employees Provident Fund in respect of his part-time employment with the said Seng Lee Co. Ltd. with effect from January, 1958, and that in consequence the plaintiff was liable to pay arrears of contribution on Lim's behalf amounting to $4,220 in respect of his full-time employment with the plaintiff as aforesaid for the period February, 1958, to February, 1966. The plaintiff, in order to avoid the risk of prosecution, complied with the demand of the defendant and paid to the defendant the said sum of $4,220 under protest on the 14th July, 1967. On the 27th July, 1967, the defendant sent to the plaintiff Form EPF.1195 being a demand for payment of interest on contributions in arrears amounting to $1,645 and on the 9th August, 1967, the plaintiff paid the said sum of $1,645 to the defendant, again under protest.

It was the contention of the defendant that on Lim taking up employment with Seng Lee Co. Ltd., he became an employee within the definition of that word in section 2 and that by virtue of section 7(1) of the Ordinance not only Lim and Seng Lee Co. Ltd. but also the plaintiff as an "employer of a person who is an employee" became liable to pay contributions. It was also contended by the defendant that after he be-